

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

15 Cv. 07175 (KAM) (RML)

SECURITIES AND EXCHANGE COMMISSION

- against -

MARTIN SHKRELI,

Defendant.

DEFENDANT MARTIN SHKRELI'S
SUR-REPLY MEMORANDUM

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Defendant Shkreli's Sur-Reply Memorandum

Defendant Martin Shkreli respectfully submits this brief Sur-Reply Memorandum in response to the Reply Memoranda of the Government and the Securities and Exchange Commission (SEC).¹

1. Scope of Shkreli's Requested Relief

As an initial point of clarification, the observations of the SEC in its Reply Memorandum at footnote 1, page 1, are correct: defendant Shkreli is not asking to be immune from discovery. Rather, he reserves the right to assert his Fifth Amendment privilege in light of the pending indictment. With these understandings, it appears that the SEC does not object to the procedure proposed by defendant Shkreli, and is agreeable to the SEC case proceeding in the normal course. Therefore, the only opposition to the SEC case proceeding is posed by the Government.

2. Government's Basis to Stay SEC proceedings

In support of its position, the Government states that "Shkreli has taken steps to intimidate or threaten individuals in the past." Government Reply Memorandum, p. 12. Because of this, the Government argues, the SEC case should be stayed for fear that Shkreli will intimidate witnesses. However, there are multiple flaws with the Government's rationale. First, there is no allegation that Shkreli has sought to intimidate or threaten witnesses in any case. The incident cited by the Government concerned someone named Timothy Pierotti² who was alleged to have defrauded and misappropriated funds from Retrophin. In an effort to rightfully reclaim what had been stolen, Shkreli contacted the individual and members of his family and tried to convince them to rectify the situation without the need for court intervention. Ultimately, the matter resulted in a lawsuit brought by Retrophin to recoup the unlawfully obtained property.

¹ We thank the Court for allowing this brief Sur-Reply.

² Mr. Pierotti was identified in the Government's Reply Memorandum.

Shkreli addressed the Pierotti situation when he voluntarily spoke with the AUSAs and FBI Agents at the U.S. Attorney's Office on January 29, 2015. The FBI 302 report of this portion of the interview provides, in part, as follows:

TIM PIEROTTI worked for MSMB. PIEROTTI stole millions from SHKRELI. SHKRELI gave PIEROTTI shares in RTRX (Retrophyn) equivalent to a five percent ownership stake. The very next day, after PIEROTTI received the RTRX shares from SHKRELI, PIEROTTI stopped showing up at RTRX's office. PIEROTTI wound up settling with SHKRELI, paying SHKRELI millions. PIEROTTI was in terrible financial shape personally so SHKRELI gave PIEROTTI a check for \$5,000 which PIEROTTI cashed.

What is most significant about this situation is that when Shkreli could not persuade Pierotti to return the misappropriated funds voluntarily, he brought suit and allowed the legal matter to be resolved in the court system. There is every reason to expect that he will do the same here.

The Government also referred to a situation where Shkreli allegedly contacted a witness and "suggested that the witness agree to a false version of certain events." Government Reply Memorandum, p.14. The Government does not identify this person nor does it indicate what Shkreli allegedly said, making a meaningful defense of such an insinuation virtually impossible. In any event, however, Shkreli denies that he ever suggested to someone that he or she change a version of events or provide false information.

Mr. Shkreli has shown that he will defend the allegations in the Indictment and the SEC complaint through his lawyers and in the context of the legal system. There is no indication he will intimidate or tamper with witnesses. Accordingly, this is not a basis to stay the SEC matter.

In addition, due to other civil litigation involving Retrophin and related matters, Shkreli is likely already aware of the identities of the witnesses against him. Therefore, the

Government's concern that the SEC matter will reveal the identities of witnesses in the criminal case is moot as he already has this information.

3. Conclusion

Given the specific facts, the limited stay requested here is reasonable and fair. The SEC case should proceed to the discovery stage. Defendant Shkreli has a Fifth Amendment right due to his pending indictment and may invoke that right in connection with testimony or documents with the expectation that if he does so, there may be an adverse inference drawn against him in the SEC matter.

Dated: February 25, 2016

Respectfully submitted,

/s/

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